

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1786 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

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HARSHADBHAI BANUBHAI PATEL & ORS.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

Shri P.R. Abichandani, Advocate, for Shri Y.N.  
Oza, Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for the  
Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 12/07/96

ORAL JUDGEMENT

The order passed by the State Government (respondent No. 1 herein) on 6th March 1984 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under art. 226 of the Constitution of India. By the impugned order, respondent No. 1 revised and set aside

the order passed by the Competent Authority at Ahmedabad (respondent No.2 herein) on 27th July 1982 granting permission to the petitioners under sec. 21(1) of the Act with respect to certain parcels of land bearing survey Nos. 613(part), 614(part), 615(part) and 616(part) in all admeasuring 12548 square meters situated at Isanpur within the urban agglomeration of Ahmedabad (the disputed land for convenience).

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that the petitioners applied for and they were granted the permission under sec. 21(1) of the Act with respect to the disputed land on certain terms and conditions. Its copy is at Annexure A to this petition. It appears to have come to the notice of the concerned officer of respondent No. 1. He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was contemplated. A show-cause notice thereupon came to be issued on 18th October 1982 calling upon the petitioners to show cause why the order at Annexure A to this petition should not be revised. It appears that the petitioners filed their reply thereto on 25th January 1983. By the order passed on 6th March 1984, respondent No. 1 set aside the order at Annexure A to this petition and remanded the matter to respondent No. 2 for deciding the matter afresh according to law in the light of observations made therein. Its copy is at Annexure B to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning its correctness.

3. Ordinarily, I would have accepted the correct submission urged before me by learned Assistant Government Pleader Shri Sompura for the respondents to the effect that this Court should not interfere with the order of remand. It cannot be gainsaid that, by the impugned order at Annexure B to this petition, respondent No. 1 has remanded the matter to respondent No. 2 for his fresh decision according to law in the light of certain observations made therein. This order would ordinarily deserve no interference by this Court in this petition under art. 226 of the Constitution of India.

4. The petitioners have however, by amendment, brought on record some events that occurred during the pendency of this petition. While issuing rule in this case, by the order passed on 30th March 1984, this Court did not prevent the petitioners from going ahead with the construction work only by observing that such work will

be at their risks and consequences. The petitioners have thereupon completed the scheme and they have constructed about 200 dwelling units and they have been handed over to a co-operative housing society in the name and style of Siddhida Co-operative Housing Society brought into existence by allottees of such dwelling units. It has been further averred in para 18A of the petition inserted by way of amendment that about 120 families have started residing in the aforesaid housing society. It thus becomes clear that the scheme sanctioned by the order at Annexure A to this petition has become a fait accompli. Even though the order sanctioning the scheme under sec. 21(1) of the Act at Annexure A to this petition has been revised and set aside by the impugned order at Annexure B to this petition, it appears to have been fully implemented during the pendency of this petition before this Court. In that view of the matter, though the impugned order at Annexure B to this petition does not call for any interference by this Court in this petition under art. 226 of the Constitution of India, it will have to be quashed and set aside as the scheme sanctioned by the order at Annexure A to this petition has been fully materialised. It may be mentioned that in practically identical matter in Special Civil Application No. 1785 of 1984 decided on 22nd February 1995 this Court has quashed and set aside an almost similar action of the State Government.

5. In the result, this petition is accepted. The order passed by and on behalf of the State Government on 6th March 1984 at Annexure B to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.

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